

EXHIBIT 36

1 Patrick R. Kitchin, Esq. (SBN 162965)
2 **THE LAW OFFICE OF PATRICK R. KITCHIN**
3 565 Commercial Street, 4th Floor
4 San Francisco, CA 94111
5 Telephone: (415) 677-9058
6 Facsimile: (415) 627-9076
7 Attorneys for Plaintiffs

FILED
San Francisco County Superior Court

FEB 07 2007

GORDON PARK-LI, Clerk
BY: *Gordon Park-Li* 104
Deputy Clerk

5 Daniel Feder (State Bar No. 130867)
6 **THE LAW OFFICES OF DANIEL FEDER**
7 807 Montgomery Street
8 San Francisco, CA 94133
9 (415) 391-9476

10 Counsel to Ann Otsuka, Janis Keefe, Corinne Phipps,
11 and Justin Kiser

12 SUPERIOR COURT OF CALIFORNIA

13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14 ANN OTSUKA, an individual; JANIS
15 KEEFE, an individual; CORINNE PHIPPS, an
16 individual; and JUSTIN KISER, an individual;
17 and on behalf of all others similarly situated, }
18 Plaintiffs, }
19 vs. }
20 POLO RALPH LAUREN CORPORATION; a }
21 Delaware Corporation; POLO RETAIL, LLC., }
22 a Delaware Corporation; POLO RALPH }
23 LAUREN CORPORATION, a Delaware }
24 Corporation, doing business in California as }
25 POLO RETAIL CORP; FASHIONS OUTLET }
26 OF AMERICA, INC., a Delaware Corporation }
27 and DOES 1-500, inclusive }
Defendants. }

Case No.: CGC-06-452655

ORDER OVERRULING IN PART AND
SUSTAINING IN PART DEFENDANTS'
DEMURRER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

Date: January 22, 2007

Time: 9:30 a.m.

Department: 304

Hon Richard Kramer

Complaint Filed: May 30, 2006

23 The demurrer of Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Fashions
24 Outlet of America, Inc., and Polo Retail Corporation (collectively referred to herein as
25 "Defendants" or "Polo") to the First Amended Complaint ("Complaint") of Plaintiffs Ann
26 Otsuka, an individual, Janis Keefe, an individual, Corinne Phipps, an individual, and Justin
27 Kiser, an individual, and on behalf of all others similarly situated (collectively referred to herein

1 as "Plaintiffs") having come on regularly for hearing before this court on January 22, 2007, and
2 the pleadings and oral arguments have been considered by the court, and good cause appearing
3 therefor,

4 IT IS HEREBY ORDERED as follows:

- 5 1. Polo's demurrer to the First Cause of Action to the Complaint for alleged Fraud is
6 OVERRULED.
- 7 2. Polo's demurrer to the Second Cause of Action to the Complaint for alleged False
8 Imprisonment is OVERRULED as to Plaintiff Justin Kiser, and SUSTAINED
9 WITHOUT LEAVE TO AMEND as to Plaintiffs Ann Otsuka, Janis Keefe and
10 Corinne Phipps.
- 11 3. Polo's demurrer to the Seventh Cause of Action to the Complaint for alleged
12 violations of California Labor Code § 226.7 is OVERRULED as to Plaintiff Justin
13 Kiser.
- 14 4. Polo's demurrer to the Eighth Cause of Action to the Complaint for alleged violations
15 of California Labor Code § 226.7 is OVERRULED as to Plaintiff Justin Kiser, and
16 SUSTAINED WITHOUT LEAVE TO AMEND as to Plaintiffs Ann Otsuka, Janis
17 Keefe and Corinne Phipps.
- 18 5. Polo's demurrer to the Eleventh Cause of Action to the Complaint for alleged Unjust
19 Enrichment is SUSTAINED WITHOUT LEAVE TO AMEND.
- 20 6. Polo's demurrer to the Thirteenth Cause of Action to the Complaint for alleged
21 violations of Labor Code §§ 2699, et seq., is OVERRULED as to Plaintiff Justin
22 Kiser, and SUSTAINED WITHOUT LEAVE TO AMEND as to Plaintiffs Ann
23 Otsuka, Janis Keefe and Corinne Phipps.

24 ///

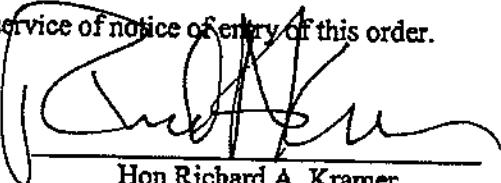
25 //

26 ///

27 ///

1 Defendants are hereby ordered to file their response to Plaintiff's First Amended
2 Complaint within 10 calendar days from service of notice of entry of this order.
3

4 Dated: 2-5-07

5 
Hon Richard A. Kramer
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Judge of the Superior Court

Approved as to Form on this 25th day of January, 2007:

William J. Goines
10 William J. Goines, Esq.
11 Counsel to Defendants
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT 37

1 Patrick R. Kitchin, Esq. (SBN. 162965)
2 **THE LAW OFFICE OF PATRICK R. KITCHIN**
3 565 Commercial Street, 4th Floor
4 San Francisco, CA 94111
5 415-677-9058
6 415-627-9076 (fax)

7 Daniel Feder (SBN. 130867)
8 **THE LAW OFFICES OF DANIEL FEDER**
9 807 Montgomery Street
10 San Francisco, CA 94133
11 (415) 391-9476

12 Attorneys for Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSED
FILED
San Francisco County Superior Court
FEB 13 2007
BY GORDON PARK-LI, Clerk
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

100 ANN OTSUKA, an individual; JANIS KEEFE,) Case No.: CGC-06-452655
101 an individual; CORINNE PHIPPS, an)
102 individual; and JUSTIN KISER, an individual;) NOTICE OF ENTRY OR ORDER
103 individually and on behalf of all others similarly) OVERRULING IN PART AND
104 situated,) SUSTAINING IN PART DEFENDANTS'
105) DEMURRER TO PLAINTIFF'S FIRST
106 Plaintiffs,) AMENDED COMPLAINT
107 vs.)
108)
109 POLO RALPH LAUREN CORPORATION; a)
110 Delaware Corporation; POLO RETAIL, LLC., a)
111 Delaware Corporation; POLO RALPH)
112 LAUREN CORPORATION, a Delaware)
113 Corporation, doing business in California as)
114 POLO RETAIL CORP; FASHIONS OUTLET)
115 OF AMERICA, INC., a Delaware Corporation)
116 and DOES 1-500, inclusive)
117)
118 Defendants.)
119)
120)
121)
122)
123)
124)
125)

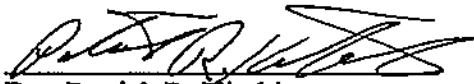
TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

126 PLEASE TAKE NOTICE, on February 5, 2007, the San Francisco Superior Court,

1 Department 304, issued an Order Overruling in Part and Sustaining in Part Defendants' Demurrer
2 to Plaintiff's First Amended Complaint. A conformed copy of that order is attached hereto.
3
4

5 Dated: February 9, 2007

6 THE LAW OFFICE OF PATRICK R. KITCHIN
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


By: Patrick R. Kitchin

ENDORSED
FILED
San Francisco County Superior Court

1 Patrick R. Kitchin, Esq. (SBN 162965)
THE LAW OFFICE OF PATRICK R. KITCHIN
2 565 Commercial Street, 4th Floor
San Francisco, CA 94111
3 Telephone: (415) 677-9058
Facsimile: (415) 627-9076
4 Attorneys for Plaintiffs

FEB - 7 2007
GORDON PARK-LI, Clerk
BY: FELICIA M. GREEN
Deputy Clerk

5 Daniel Feder (State Bar No. 130867)
THE LAW OFFICES OF DANIEL FEDER
6 807 Montgomery Street
San Francisco, CA 94133
7 (415) 391-9476

8 Counsel to Ann Otsuka, Janis Keefe, Corinne Phipps,
and Justin Kiser

9 **SUPERIOR COURT OF CALIFORNIA**

10 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

11 ANN OTSUKA, an individual; JANIS } Case No.: CGC-06-452655
12 KEEFE, an individual; CORINNE PHIPPS, an }
13 individual; and JUSTIN KISER, an individual; }
14 and on behalf of all others similarly situated, }
15 Plaintiffs,

ORDER OVERRULING IN PART AND
SUSTAINING IN PART DEFENDANTS'
DEMURRER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

16 vs.
17 **POLO RALPH LAUREN CORPORATION; a**
18 **Delaware Corporation; POLO RETAIL, LLC.,**
19 **a Delaware Corporation; POLO RALPH**
20 **LAUREN CORPORATION, a Delaware**
21 **Corporation, doing business in California as**
22 **POLO RETAIL CORP; FASHIONS OUTLET**
23 **OF AMERICA, INC., a Delaware Corporation**
24 **and DOES 1-500, inclusive**

Date: January 22, 2007
Time: 9:30 a.m.
Department: 304
Hon Richard Kramer

Complaint Filed: May 30, 2006

25 Defendants.

26 The demurrer of Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Fashions
27 Outlet of America, Inc., and Polo Retail Corporation (collectively referred to herein as
"Defendants" or "Polo") to the First Amended Complaint ("Complaint") of Plaintiffs Ann
Otsuka, an individual, Janis Keefe, an individual, Corinne Phipps, an individual, and Justin
Kiser, an individual, and on behalf of all others similarly situated (collectively referred to herein

1 as "Plaintiffs") having come on regularly for hearing before this court on January 22, 2007, and
2 the pleadings and oral arguments have been considered by the court, and good cause appearing
3 therefor,

4 **IT IS HEREBY ORDERED** as follows:

- 5 1. Polo's demurrer to the First Cause of Action to the Complaint for alleged Fraud is
6 **OVERRULED.**
- 7 2. Polo's demurrer to the Second Cause of Action to the Complaint for alleged False
8 Imprisonment is **OVERRULED** as to Plaintiff Justin Kiser, and **SUSTAINED**
9 **WITHOUT LEAVE TO AMEND** as to Plaintiffs Ann Otsuka, Janis Keefe and
10 Corinne Phipps.
- 11 3. Polo's demurrer to the Seventh Cause of Action to the Complaint for alleged
12 violations of California Labor Code § 226.7 is **OVERRULED** as to Plaintiff Justin
13 Kiser.
- 14 4. Polo's demurrer to the Eighth Cause of Action to the Complaint for alleged violations
15 of California Labor Code § 226.7 is **OVERRULED** as to Plaintiff Justin Kiser, and
16 **SUSTAINED WITHOUT LEAVE TO AMEND** as to Plaintiffs Ann Otsuka, Janis
17 Keefe and Corinne Phipps.
- 18 5. Polo's demurrer to the Eleventh Cause of Action to the Complaint for alleged Unjust
19 Enrichment is **SUSTAINED WITHOUT LEAVE TO AMEND**.
- 20 6. Polo's demurrer to the Thirteenth Cause of Action to the Complaint for alleged
21 violations of Labor Code §§ 2699, et seq., is **OVERRULED** as to Plaintiff Justin
22 Kiser, and **SUSTAINED WITHOUT LEAVE TO AMEND** as to Plaintiffs Ann
23 Otsuka, Janis Keefe and Corinne Phipps.

24 ///

25 //

26 ///

27 ///

1 Defendants are hereby ordered to file their response to Plaintiff's First Amended
2 Complaint within 10 calendar days from service of notice of entry of this order.

3 RICHARD A. KRAMER

4 Dated: 2-5-07

5 Hon Richard A. Kramer
6
7
8 Judge of the Superior Court

9
10 Approved as to Form on this 25th day of January, 2007:

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

William J. Goines, Esq.
Counsel to Defendants

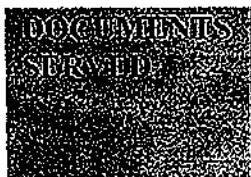
OUTSIDE THE UNITED STATES LAUREN CORPORATION, ET AL.

casp

PROOF OF SERVICE

1. I, Karla Donis, the below signed declare, I am employed, in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 565 Commercial Street, 4th Floor, San Francisco, California 94111.
2. I am familiar with the office practice for depositing U.S. Mail, facsimile transmission and Federal Express routing. In addition, I am familiar with both State and Local Rules regarding use of recycled paper and represent this document and all documents referred to herein comply with applicable recycled paper use requirements.
3. On February 13, 2007, I served the following documents on the parties identified as follows:

**William J. Goines, Esq.
Greenberg Traurig, LLP
1900 University Ave., 5th Floor
East Palo Alto, CA 94303**



- NOTICE OF ENTRY OR ORDER OVERRULING IN PART AND SUSTANING IN PART DEFENDANTS' DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT.

4. The manner of service is indicated below. Please check one.



I caused each such document, in an envelope, to be served by hand on the person listed above.



I caused each such document, in an envelope, with first-class postage thereon fully pre-paid, to be deposited with the U.S. Mail in San Francisco, California.



I caused each such document, to be transmitted by facsimile to the facsimile number known by me to be the facsimile number of each of the parties listed on the attached service list.



I caused each such document, in an envelope, with Federal Express postage, postage pre-paid, to be deposited with Federal Express in San Francisco, California.

CONFIDENTIAL - ATTORNEY'S FEES

06-1526

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Karla Donis

2/13/07

Date

EXHIBIT 38

1 WILLIAM J. GOINES (SBN 061290)
 2 JEREMY A. MEIER (SBN 139849)
 3 ALISHA M. LOUIE (SBN 240863)
 4 GREENBERG TRAURIG, LLP
 5 1900 University Avenue, Fifth Floor
 6 East Palo Alto, California 94303
 7 Telephone: (650) 328-8500
 8 Facsimile: (650) 328-8508
 9 Email: goinesw@gtlaw.com
 10 meierj@gtlaw.com
 11 louiea@gtlaw.com

ENDORSED FILED
 SUPERIOR COURT
 COUNTY OF SAN FRANCISCO

FEB 28 2007

GORDON PARK-LI, CLERK
 BY: REPUY STARK

7 BRIAN S. COUSIN (*PRO HAC VICE*)
 8 NEIL A. CAPOBIANCO (*PRO HAC VICE*)
 9 GREENBERG TRAURIG, LLP
 10 MetLife Building
 11 200 Park Avenue
 12 New York, NY 10166
 13 Telephone: (212) 801-9200
 14 Facsimile: (212) 801-6400
 15 Email: cousinb@gtlaw.com
 16 capobiancon@gtlaw.com

17 Attorneys for Defendants Polo Ralph Lauren
 18 Corporation; Polo Retail, LLC; Polo Ralph Lauren
 19 Corporation, doing business in California as Polo
 20 Retail Corporation; and Fashions Outlet of
 21 America, Inc.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 17 FOR THE COUNTY OF SAN FRANCISCO

18 ANN OTSUKA, an individual; JANIS
 19 KEEFE, an individual; CORINNE PHIPPS,
 20 an individual; and JUSTIN KISER, an
 21 individual; and on behalf of all other similarly
 22 situated,

Plaintiff(s),

Case No. CGC-06-452655

23 v.
 24 POLO RALPH LAUREN CORPORATION,
 25 a Delaware Corporation; POLO RETAIL,
 26 LLC, a Delaware Corporation; POLO
 27 RALPH LAUREN CORPORATION, a
 28 Delaware Corporation, doing business in
 California as POLO RETAIL CORP;
 FASHIONS OUTLET OF AMERICA, INC.,
 a Delaware Corporation and DOES 1-500,
 inclusive,

DOING BUSINESS IN CALIFORNIA AS
 POLO RETAIL CORPORATION; AND
 FASHIONS OUTLET OF AMERICA, INC.'S
 ANSWER TO FIRST AMENDED
 COMPLAINT

BY FAX

Date Action Filed: May 30, 2006

1 Defendants POLO RALPH LAUREN CORPORATION, a Delaware Corporation; POLO
 2 RETAIL, LLC, a Delaware Corporation; POLO RALPH LAUREN CORPORATION, a Delaware
 3 Corporation, doing business in California as POLO RETAIL CORP; and FASHIONS OUTLET OF
 4 AMERICA, INC., a Delaware Corporation ("POLO" or "Defendants"), for themselves alone and for
 5 no other defendants, hereby answer the unverified First Amended Complaint of Plaintiffs ANN
 6 OTSUKA, an individual; JANIS KEEFE, an individual; CORINNE PHIPPS, an individual; and
 7 JUSTIN KISER, an individual; and on behalf of all other similarly situated ("Plaintiffs") as follows:

8 **GENERAL DENIAL**

9 Pursuant to California Code of Civil Procedure §431.30(d), Defendants generally deny each
 10 and every allegation and cause of action contained in the First Amended Complaint, as effected by
 11 the Court's February 13, 2007 Order Overruling in Part and Sustaining in Part Defendants' Demurrer
 12 to Plaintiffs' First Amended Complaint. Defendants further deny that Plaintiffs are entitled to the
 13 relief requested or any relief at all, and that Plaintiffs sustained or will sustain damages in the sum or
 14 sums alleged, or any other sum or sums, or at all. Defendants further deny that Plaintiffs are entitled
 15 to attorneys' fees in the sum or sums alleged, or any other sum or sums, or at all.

16 **JURISDICTION AND VENUE**

17 Defendants specifically reserve the right to remove this action to United States
 18 District Court based on 28 U.S.C. §1441, *et. seq.* or 28 U.S.C. §1453, *et. seq.* ("the Class Action
 19 Fairness Act of 2005" or "CAFA"). Discovery in this action is ongoing and Defendants' Answer
 20 should not be construed as a waiver of the right to seek removal under either traditional diversity
 21 grounds or under CAFA.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 (Failure to State a Cause of Action)

25 The First Amended Complaint fails to state a cause of action upon which relief may be
 26 granted.

27 //

28 //

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiffs have failed to mitigate their alleged damages, and have failed to exercise due diligence in an effort to mitigate their damages.

THIRD AFFIRMATIVE DEFENSE

(Lack of Causation)

Defendants did not cause any damages alleged by Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

(EstoppeL)

Plaintiffs' action is barred by the doctrine of estoppel. Plaintiffs are estopped from asserting the claims set forth in their First Amended Complaint by reason of their own conduct, actions or inactions, and are barred, in whole or in part, from the relief sought therein.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs' First Amended Complaint, and each cause of action therein, is barred by the doctrine of waiver, in whole or in part, by virtue of their own conduct, actions, or inaction.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs' First Amended Complaint, and each cause of action alleged therein, is barred by the doctrine of Unclean Hands.

SEVENTH AFFIRMATIVE DEFENSE

(*in pari delicto*)

Plaintiffs' action is barred by the doctrine of *in pari delicto*.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs' action is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(Ratification)

Plaintiffs' action is barred by the doctrine of ratification, confirmation and acquiescence.

TENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' claims are barred by the applicable Statute of Limitations, including but not limited to those as set forth in California Code of Civil Procedure Sections 335.1, 337, 338, and 340, California Government Code Sections 12960 and 12965, and in California Business and Professions Code Section 17208, and in any other relevant statutes of limitation.

ELEVENTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendants acted reasonably and in good faith at all times, based on all relevant facts and circumstances known by them at the time that they acted. Accordingly, Plaintiffs are barred, in whole or in part, from any recovery in this action.

TWELFTH AFFIRMATIVE DEFENSE

(Excuse of Performance)

Plaintiffs' First Amended Complaint, and each and every cause of action therein, fail because Defendants were excused from performing any alleged obligations.

THIRTEENTH AFFIRMATIVE DEFENSE

(Claims Barred)

Plaintiffs' claims are barred in whole or in part because Plaintiffs failed to properly discharge their duties and obligations under the terms of their alleged employment contracts with Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

(Meal and Rest Breaks Provided)

Plaintiffs' claims are barred in whole or in part because Plaintiffs were given the opportunity to take rest and/or meal breaks but they voluntarily elected not to.

111

111

FIFTEENTH AFFIRMATIVE DEFENSE

(*De Minimis*)

To the extent that Plaintiffs' meal and/or rest breaks were untimely or short by just a few minutes, Plaintiffs' meal and/or rest break claims constitute irrelevant *de minimis* violations.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure to Plead Facts Sufficient to Support Punitive Damages)

Plaintiffs are not entitled to recover any punitive or exemplary damages and any averments with respect thereto should be stricken because:

- a. Plaintiffs have failed to plead facts sufficient to support oppression, fraud and/or malice; and/or
- b. Plaintiffs have failed to plead facts sufficient to support gross or reckless disregard for the rights of Plaintiffs or that Defendants were motivated by evil motive or intent; and/or
- c. Defendants did not commit any alleged oppressive, fraudulent or malicious act, nor authorized or ratified such an act.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Recovery for Statutory Penalties and Punitive Damages)

Punitive damages are not available in addition to Labor Code penalties because a penalty on a penalty is not permitted.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Damages)

Defendants are informed and believe and based thereon allege that Plaintiffs have not suffered any damage as a result of any actions taken by Defendants, and Plaintiffs are thereby barred from asserting any claim against Defendants.

NINETEENTH AFFIRMATIVE DEFENSE

(*De Minimis Non Curat Lex*)

Plaintiffs are seeking compensation for trivial, non-compensable time spent before and after their principal work activities.

TWENTIETH AFFIRMATIVE DEFENSE

(Privilege)

The actions of Defendants as alleged in the First Amended Complaint were based on Defendants' legitimate economic interests, and on that basis, were privileged.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Defendants' Right to Attorneys' Fees)

Defendants are entitled to recover all attorneys' fees and costs incurred herein, insofar as any and all of the claims alleged in the First Amended Complaint are frivolous, unreasonable or without foundation.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Management Discretion)

Any and all conduct about which Plaintiffs complain and which is attributed to Defendants was a just and proper exercise of management discretion, was undertaken for fair and honest reasons, and was regulated by good faith under the circumstances existing at all times mentioned in Plaintiffs' First Amended Complaint.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Justification)

The conduct alleged in the First Amended Complaint, and in each cause of action alleged, was justified by business necessity.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Ratification)

Plaintiffs' claims are barred, in whole or in part, by the doctrine of ratification, consent and acquiescence.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Class Exists)

Plaintiffs' First Amended Complaint and the alleged causes of action do not state facts sufficient to certify a class. Class action treatment is improper because the acts or omissions about

1 which Plaintiffs complain are individualized issues about which no illegal or improper Polo policy or
2 practice exists. Further, the class that plaintiffs seek to represent is ill-defined.
3

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 (Individual Issues Predominate)

6 Class action treatment is improper because individualized issues amongst Plaintiffs
7 predominate.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 (Class Action Unworkable)

10 Class action treatment is improper because individualized issues would render such a class
11 action impractical and unworkable.

12 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

13 (Improper Class Representative)

14 Plaintiffs are not proper class representatives. Plaintiffs will not fairly or adequately protect
15 the interests of the class they seek to represent. Plaintiffs' claims and Defendants' individualized
16 defenses thereto are not typical of the class that plaintiffs seek to represent.

17 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

18 (No Class Wide Injury)

19 Defendants aver that there has been no class-wide injury as alleged by the named Plaintiffs.
20 The injuries for which recovery is sought by the named Plaintiffs on behalf of the purported class
21 cannot be recovered without proof by each class member as to the specific facts underlying the
22 violations alleged by each class member and the losses allegedly suffered as a direct and proximate
23 result of each such alleged violation.

24 **THIRTIETH AFFIRMATIVE DEFENSE**

25 (Due Process)

26 Defendants' rights to due process under the United States and California Constitutions would
27 be violated if this action were tried as a class action.

28 ///

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

Plaintiffs' action is barred, in whole or in part, by the doctrine of accord and satisfaction.

THIRTY SECOND AFFIRMATIVE DEFENSE

(Set Off)

Plaintiffs' action is barred, in whole or in part, by the doctrine of set off and payment in satisfaction.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Exemption)

Plaintiffs' action is barred, in whole or in part, by virtue of Plaintiffs' exempt status pursuant to California Industrial Welfare Commission orders and regulations including, but not limited to, Order No. 7-2001.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Commissioned Inside Sales Employee Exemption)

Plaintiffs are commissioned employees exempt from any overtime requirements pursuant to Section 3(D) of Industrial Welfare Commission Order No. 7-2001.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Because of the vague language and allegations in the First Amended Complaint, including but not limited to several allegations that render the First Amended Complaint uncertain pursuant to California Code of Civil Procedure § 430.10(f), Defendants cannot anticipate all possible defenses at this time. As such, Defendants reserve their right to add additional separate defenses at an appropriate time.

11

11

11

1 WHEREFORE, Defendants demand that Plaintiffs' First Amended Complaint be dismissed in
2 its entirety with prejudice; that judgment be granted to Defendants with costs of suit and reasonable
3 attorney's fees; and for such other relief that the Court shall deem just and proper.

4 Dated: February 28, 2007.

5 GREENBERG TRAURIG, LLP

6 By: 
7 William J. Goines, Esq.

8 Attorneys for Defendants Polo Ralph Lauren
9 Corporation; Polo Retail, LLC; Fashions Outlet
of America, Inc.; and Polo Retail Corporation

1 Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Case No. CGC-06-452655

2 **PROOF OF SERVICE**3 I, Cathy Sandifer, am a citizen of the United States, over the age of eighteen years and not a
4 party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business
5 address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On February 28, 2007, I
served the following documents:6 DEFENDANTS POLO RALPH LAUREN CORPORATION; POLO RETAIL, LLC;
7 POLO RALPH LAUREN CORPORATION, DOING BUSINESS IN CALIFORNIA AS
8 POLO RETAIL CORPORATION; AND FASHIONS OUTLET OF AMERICA, INC.'S
ANSWER TO FIRST AMENDED COMPLAINT

9 by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth
10 below, or as stated on the attached service list, on this date at approximately _____, from the
11 sending facsimile machine telephone number of 650-289-7893. The transmission was reported as
12 complete and without error by the machine. Pursuant to California Rules of Court, Rule
2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of
which is attached to the original of this declaration. The transmission report was properly issued
by the transmitting facsimile machine.

13 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,
14 in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

15 by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail
16 envelope with postage thereon fully prepaid, addressed as set forth below. I am aware that on
17 motion of the party served, service is presumed invalid if delivery by Federal Express is more
than one day after date of deposit with Federal Express.

18 **(BY MESSENGER PERSONAL SERVICE).** I caused delivery of such envelope by hand to
19 the offices of the addressee.

20 Patrick R. Kitchin, Esq.
21 Law Offices of Patrick R. Kitchin
22 565 Commercial St., 4th Fl.
23 San Francisco, CA 94111
(Fax: 415-627-9076)Daniel Feder, Esq.
Law Offices of Daniel L. Feder
807 Montgomery St.
San Francisco, CA 94133
(Fax: 415-391-9432)24 I am readily familiar with the business practice of my place of employment in respect to the
25 collection and processing of correspondence, pleadings and notices for mailing with United States
26 Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed
envelope was placed for collection and mailing this date consistent with the ordinary business practice
of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at
East Palo Alto, California, in the ordinary course of such business.

27 //

28 //

EXHIBIT 39

1 WILLIAM J. GOINES (SBN 061290)
 2 JEREMY A. MEIER (SBN 139849)
 3 ALISHA M. LOUIE (SBN 240863)
 4 GREENBERG TRAURIG, LLP
 5 1900 University Avenue, Fifth Floor
 6 East Palo Alto, California 94303
 7 Telephone: (650) 328-8500
 8 Facsimile: (650) 328-8508
 9
 10 BRIAN S. COUSIN (*PRO HAC VICE*)
 11 NEIL A. CAPOBIANCO (*PRO HAC VICE*)
 12 GREENBERG TRAURIG, LLP
 13 MetLife Building
 14 200 Park Avenue
 15 New York, NY 10166
 16 Telephone: (212) 801-9200
 17 Facsimile: (212) 801-6400

18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

ENDORSED FILED
 SUPERIOR COURT
 COUNTY OF SAN FRANCISCO
 FEB 28 2007
 GORDON PARK-LI, CLERK
 BY: Deputy Clerk

29 Attorneys for Defendants and Cross-Complainant
 30 Polo Ralph Lauren Corporation et al.

31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 8010
 8011
 8012
 8013
 8014
 8015
 8016
 8017
 8018
 8019
 8020
 8021
 8022
 8023
 8024
 8025
 8026
 8027
 8028
 8029
 8030
 8031
 8032
 8033
 8034
 8035
 8036
 8037
 8038
 8039
 8040
 8041
 8042
 8043
 8044
 8045
 8046
 8047
 8048
 8049
 8050
 8051
 8052
 8053
 8054
 8055
 8056
 8057
 8058
 8059
 8060
 8061
 8062
 8063
 8064
 8065
 8066
 8067
 8068
 8069
 8070
 8071
 8072
 8073
 8074
 8075
 8076
 8077
 8078
 8079
 8080
 8081
 8082
 8083
 8084
 8085
 8086
 8087
 8088
 8089
 8090
 8091
 8092
 8093
 8094
 8095
 8096
 8097
 8098
 8099
 80100
 80101
 80102
 80103
 80104
 80105
 80106
 80107
 80108
 80109
 80110
 80111
 80112
 80113
 80114
 80115
 80116
 80117
 80118
 80119
 80120
 80121
 80122
 80123
 80124
 80125
 80126
 80127
 80128
 80129
 80130
 80131
 80132
 80133
 80134
 80135
 80136
 80137
 80138
 80139
 80140
 80141
 80142
 80143
 80144
 80145
 80146
 80147
 80148
 80149
 80150
 80151
 80152
 80153
 80154
 80155
 80156
 80157
 80158
 80159
 80160
 80161
 80162
 80163
 80164
 80165
 80166
 80167
 80168
 80169
 80170
 80171
 80172
 80173
 80174
 80175
 80176
 80177
 80178
 80179
 80180
 80181
 80182
 80183
 80184
 80185
 80186
 80187
 80188
 80189
 80190
 80191
 80192
 80193
 80194
 80195
 80196
 80197
 80198
 80199
 80200
 80201
 80202
 80203
 80204
 80205
 80206
 80207
 80208
 80209
 80210
 80211
 80212
 80213
 80214
 80215
 80216
 80217
 80218
 80219
 80220
 80221
 80222
 80223
 80224
 80225
 80226
 80227
 80228
 80229
 80230
 80231
 80232
 80233
 80234
 80235
 80236
 80237
 80238
 80239
 80240
 80241
 80242
 80243
 80244
 80245
 80246
 80247
 80248
 80249
 80250
 80251
 80252
 80253
 80254
 80255
 80256
 80257
 80258
 80259
 80260
 80261
 80262
 80263
 80264
 80265
 80266
 80267
 80268
 80269
 80270
 80271
 80272
 80273
 80274
 80275
 80276
 80277
 80278
 80279
 80280
 80281
 80282
 80283
 80284
 80285
 80286
 80287
 80288
 80289
 80290
 80291
 80292
 80293
 80294
 80295
 80296
 80297
 80298
 80299
 80300
 80301
 80302
 80303
 80304
 80305
 80306
 80307
 80308
 80309
 80310
 80311
 80312
 80313
 80314
 80315
 80316
 80317
 80318
 80319
 80320
 80321
 80322
 80323
 80324
 80325
 80326
 80327
 80328
 80329
 80330
 80331
 80332
 80333
 80334
 80335
 80336
 80337
 80338
 80339
 80340
 80341
 80342
 80343
 80344
 80345
 80346
 80347
 80348
 80349
 80350
 80351
 80352
 80353
 80354
 80355
 80356
 80357
 80358
 80359
 80360
 80361
 80362
 80363
 80364
 80365
 80366
 80367
 80368
 80369
 80370
 80371
 80372
 80373
 80374
 80375
 80376
 80377
 80378
 80379
 80380
 80381
 80382
 80383
 80384
 80385
 80386
 80387
 80388
 80389
 80390
 80391
 80392
 80393
 80394
 80395
 80396
 80397
 80398
 80399
 80400
 80401
 80402
 80403
 80404
 80405
 80406
 80407
 80408
 80409
 80410
 80411
 80412
 80413
 80414
 80415
 80416
 80417
 80418
 80419
 80420
 80421
 80422
 80423
 80424
 80425
 80426
 80427
 80428
 80429
 80430
 80431
 80432
 80433
 80434
 80435
 80436
 80437
 80438
 80439
 80440
 80441
 80442
 80443
 80444
 80445
 80446
 80447
 80448
 80449
 80450
 80451
 80452
 80453
 80454
 80455
 80456
 80457
 80458
 80459
 80460
 80461
 80462
 80463
 80464
 80465
 80466
 80467
 80468
 80469
 80470
 80471
 80472
 80473
 80474
 80475
 80476
 80477
 80478
 80479
 80480
 80481
 80482
 80483
 80484
 80485
 80486
 80487
 80488
 80489
 80490
 80491
 80492
 80493
 80494
 80495
 80496
 80497
 80498
 80499
 80500
 80501
 80502
 80503
 80504
 80505
 80506
 80507
 80508
 80509
 80510
 80511
 80512
 80513
 80514
 80515
 80516
 80517
 80518
 80519
 80520
 80521
 80522
 80523
 80524
 80525
 80526
 80527
 80528
 80529
 80530
 80531
 80532
 80533
 80534
 80535
 80536
 80537
 80538
 80539
 80540
 80541
 80542
 80543
 80544
 80545
 80546
 80547
 80548
 80549
 80550
 80551
 80552
 80553
 80554
 80555
 80556
 80557
 80558
 80559
 80560
 80561
 80562
 80563
 80564
 80565
 80566
 80567
 80568
 80569
 80570
 80571
 80572
 80573
 80574
 80575
 80576
 80577
 80578
 80579
 80580
 80581
 80582
 80583
 80584
 80585
 80586
 80587
 80588
 80589
 80590
 80591
 80592
 80593
 80594
 80595
 80596
 80597
 80598
 80599
 80600
 80601
 80602
 80603
 80604
 80605
 80606
 80607
 80608
 80609
 80610
 80611
 80612
 80613
 806

1 Defendant and Cross-Complainant FASHIONS OUTLET OF AMERICA, INC. (hereinafter
 2 "Polo") alleges as follows:

3 **PRELIMINARY ALLEGATIONS**

4 1. FASHIONS OUTLET OF AMERICA, INC. is, and at all relevant times mentioned
 5 in this Cross-Complaint is a Delaware Corporation.

6 2. Polo is further informed and believes, and thereon alleges, that Plaintiff and Cross-
 7 Defendant JUSTIN KISER ("Kiser") is an individual residing in Contra Costa County, California.
 8 Kiser was employed by Polo as a Sales Associate in the Ralph Lauren store located at 90 Post Street,
 9 San Francisco, California 94101 ("Polo store") between approximately July 11, 2004 to August 5,
 10 2005.

11 3. The true names and capacities, whether individual, corporate, associate or otherwise,
 12 of Cross-Defendants sued in this Cross-Complaint as ROES 1 through 50, inclusive, are unknown to
 13 Polo who sues those Cross-Defendants by fictitious names. Polo alleges on information and belief
 14 that each of the Cross-Defendants sued herein as ROES 1 through 50 are responsible in some manner
 15 for the events and obligations alleged herein. Polo will seek leave of court to amend this Cross-
 16 Complaint to allege their true names and capacities when ascertained.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 4. Plaintiff incorporates herein by reference Paragraphs 1-3, inclusive.

19 5. Upon information and belief, a former Polo employee by the name of Germania was
 20 improperly in possession of merchandise credit for use in any Polo store. Upon information and
 21 belief, the merchandise credits were either stolen and/or illegally obtained by Germania.

22 6. On or about June 22, 2005, while working as a Sales Associate in the Polo store,
 23 Kiser received a request from Germania to charge and send store merchandise using a merchandise
 24 credit. Germania specifically requested that Kiser enter data in the Point of Sale (POS) system under
 25 the fictitious name "Rose Cassamini" instead of her own name to avoid Polo's detection of their
 26 fraudulent activities. Germania also requested that Kiser send the merchandise addressed to "Rose
 27 Cassamini".

1 7. Kiser inquired with Operations Manager Theresa Cruz ("Cruz") if it was possible for
 2 him to use merchandise credit on a "send sale" purchase but never informed Cruz that the purchase
 3 was for Germania, instead telling her that it was for a customer by the name of "Rose Cassamini".

4 8. Kiser knew that it was improper and against Polo policy to use a fictitious customer
 5 name to send store merchandise yet completed the sale and sent the merchandise to Germania under
 6 the guise of "Rose Cassamini".

7 9. On or about July 20, 2005, Kiser accompanied Germania to the Polo Ralph Lauren
 8 Factory Store located in Vacaville, California ("Polo Vacaville Outlet"). While at the store, Germania
 9 attempted to make a purchase using the Polo employee discount. When the cashier informed
 10 Germania that she could not use the Polo employee discount since she was no longer a Polo
 11 employee, she requested that Kiser purchase her merchandise for her, utilizing his Polo employee
 12 discount and with her merchandise credit. Kiser complied with Germania's request and purchased her
 13 merchandise with her merchandise credit through his Polo employee discount, even though he knew
 14 that it was against Polo policy to do so.

15 10. While working as a Sales Associate in the Polo store, Germania called Kiser to
 16 inquire about a pair of jeans in a size 30. Kiser checked the store inventory and then called Germania
 17 back informing her that the jeans were available in size 30. Germania requested that Kiser ring up her
 18 merchandise using two separate merchandise credits under the fictitious name "Gina Rochas".
 19 Germania further instructed Kiser to ring up her purchase when no managers were around. Kiser
 20 knew it was wrong to complete the sale under a fictitious name but completed the sale anyway.

21 11. With respect to sales that Kiser improperly processed for Germania, he received an
 22 8% commission.

23 12. Polo's Retail Employee Handbook prohibits dishonest conduct, including the
 24 "[L]ying or falsification in any manner related to employment." Polo Retail Employee Handbook at
 25 p. 21.

13. Polo's Retail Employee Handbook prohibits employees from using their Polo employee discount "to purchase items for other individuals (other than as gifts)..." Polo Retail Employee Handbook at p. 23.

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

14. Polo incorporates herein by reference Paragraphs 1-13 inclusive.

15. Kiser had a duty of loyalty as a Polo employee to act in the best interest of Polo, and to not take actions which would financially damage Polo. Kiser breached his fiduciary duty by manipulating records in the POS system under fictitious customer names in order to generate a sale.

16. Kiser further breached his fiduciary duty by utilizing his Polo employee discount for a non-Polo employee's financial benefit.

17. Kiser knew or had reason to know that the purchases made by Germania were made in bad faith when she requested that fictitious names be used instead of her own as to not draw suspicion. Kiser and Germania intentionally acted in bad faith by performing the sales transactions outside the presence of a manager to avoid Polo's detection of their fraudulent activities.

18. Kiser acted intentionally, willfully, in bad faith and in defiance of Kiser's duty of loyalty to Polo, and Kiser's conduct was oppressive and malicious entitling Polo to an award of punitive and exemplary damages.

19. As a proximate result of these acts of Kiser as herein-above described, Polo has been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Civil Conspiracy to Commit Fraud)

20. Polo incorporates herein by reference Paragraphs 1-13 inclusive.

21. Kiser and Roes 1-50 formulated a common plan and conspiracy to commit fraud against Polo.

22. This plan was intended by all participants to, and in fact did, financially defraud Polo by providing access to the Polo employee discount by non-Polo employees for the non-Polo

employee's financial benefit by securing merchandise at a reduced price not available to the general public.

23. This plan was further intended by all participants to, and in fact did, financially defraud Polo by falsifying Polo documents and manipulating records in the Polo POS system to generate a sale and avoid suspicion by Polo management of potentially improper and/or fraudulent conduct.

24. Kiser knew or had reason to know that the purchases made by Germania were made in bad faith when she requested that fictitious names be used instead of her own to avoid Polo's detection of her fraudulent activities. Kiser and Germania intentionally acted in bad faith by performing the sales transactions outside the presence of a manager to avoid Polo's detection of their fraudulent activities.

25. Polo has incurred damages as a result of the aforementioned conspiracy including the value of fraudulent merchandise credits and concomitant commission payments to Kiser.

26. Kiser's conduct was oppressive and malicious entitling Polo to an award of punitive and exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth below.

1. For compensatory damages in an amount to be proven at trial;
2. For interest on all damages at the legal rate according to proof;
3. For attorney's fees;
4. For punitive and exemplary damages;
5. For costs of suit incurred; and
5. For such other and further relief as the court may deem just and proper.

Dated: February 28, 2007.

GREENBERG TRAURIG, LLP

By: Mike C

William J. Goines, Esq.

William J. Conne, Esq.
Attorneys for Defendants and Cross-Complainant
Polo

1 Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Case No. CGC-06-452655

2 **PROOF OF SERVICE**3 I, Cathy Sandifer, am a citizen of the United States, over the age of eighteen years and not a
4 party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business
5 address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On February 28, 2007, I
served the following documents:6 **CROSS-COMPLAINT OF FASHIONS OUTLET OF AMERICA, INC. FOR BREACH
7 OF FIDUCIARY DUTY AND CIVIL CONSPIRACY TO COMMIT FRAUD**

8 by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth
9 below, or as stated on the attached service list, on this date at approximately _____, from the
10 sending facsimile machine telephone number of 650-289-7893. The transmission was reported as
11 complete and without error by the machine. Pursuant to California Rules of Court, Rule
12 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of
13 which is attached to the original of this declaration. The transmission report was properly issued
14 by the transmitting facsimile machine.

15 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,
16 in the **UNITED STATES MAIL** at East Palo Alto, California, addressed as set forth below.

17 by **OVERNIGHT MAIL** by placing the document(s) listed above in a sealed overnight mail
18 envelope with postage thereon fully prepaid, addressed as set forth below. I am aware that on
19 motion of the party served, service is presumed invalid if delivery by Federal Express is more
20 than one day after date of deposit with Federal Express.

21 **(BY MESSENGER PERSONAL SERVICE).** I caused delivery of such envelope by hand to
22 the offices of the addressee.

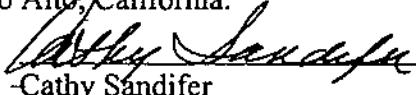
23 Patrick R. Kitchin, Esq.
24 Law Offices of Patrick R. Kitchin
25 565 Commercial St., 4th Fl.
26 San Francisco, CA 94111
27 (Fax: 415-627-9076)

28 Daniel Feder, Esq.
Law Offices of Daniel L. Feder
807 Montgomery St.
San Francisco, CA 94133
(Fax: 415-391-9432)

29 I am readily familiar with the business practice of my place of employment in respect to the
30 collection and processing of correspondence, pleadings and notices for mailing with United States
31 Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed
32 envelope was placed for collection and mailing this date consistent with the ordinary business practice
33 of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at
34 East Palo Alto, California, in the ordinary course of such business.

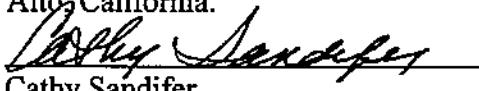
35 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
36 correct.

37 Executed on February 28, 2007, at East Palo Alto, California.


38
Cathy Sandifer

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
2 correct.

3 Executed on February 28, 2007, at East Palo Alto, California.

4 
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cathy Sandifer

MESSAGE CONFIRMATION

02/28/2007 13:05
ID=GREENBERG TRAURG LLP

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT	S.C.
02/28	03'12"	415 627 9076	TX	018	OK	0000

02/28/2007 13:01 GREENBERG TRAURG LLP → 2321#093800#14156279076# NO. 144 P001

Greenberg Traurig

Transmittal Cover Sheet

From: Cathy Sandifer, Secretary to William J. Goines Tel: 650.289.7862 E-Mail: sandiferc@gtlaw.com

To:	Fax No:	Company:	Phone No.:
Patrick R. Kitchin, Esq	(415) 627-9076	Law Offices of Patrick R. Kitchin	(415) 677-9058
Daniel Feder, Esq.	(415) 391-9432	Law Offices of Daniel L. Feder	(415) 391-9476

File No.: 62321-093800

Re: Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Date: February 28, 2007

No. Pages: Including Cover Sheet / 3

If you do not receive all pages properly, please call the sender.

Notes: Attached please find the Answer to First Amended Complaint and Fashions Outlet of America, Inc.'s Cross-Complaint against Justin Kiser.

Also sent via: US Mail Overnight Messenger Email No Other

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

MESSAGE CONFIRMATION

02/28/2007 13:10
ID=GREENBERG TRAURG LLP

DATE 02/28	S.R-TIME 03'35"	DISTANT STATION ID 4153919432	MODE TX	PAGES 018	RESULT OK	S.C. 00000
---------------	--------------------	----------------------------------	------------	--------------	--------------	---------------

02/28/2007 13:02 GREENBERG TRAURG LLP → 2321#093800#14153919432# NO.145 D001

Greenberg Traurig

Transmittal Cover Sheet

From: Cathy Sandifer, Secretary to William J. Goines Tel: 650.289.7862 E-Mail: sandiferc@gtlaw.com

To:	Fax No:	Company:	Phone No.:
Patrick R. Kitchin, Esq	(415) 627-9076	Law Offices of Patrick R. Kitchin	(415) 677-9058
Daniel Feder, Esq.	(415) 391-9432	Law Offices of Daniel L. Feder	(415) 391-9476

File No.: 62321-093800
 Re: Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.
 Date: February 28, 2007
 No. Pages: Including Cover Sheet / 3
If you do not receive all pages properly, please call the sender.
 Notes: Attached please find the Answer to First Amended Complaint and Fashions Outlet of America, Inc.'s Cross-Complaint against Justin Kiser.

Also sent via: US Mail Overnight Messenger Email No Other

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

EXHIBIT 40

ENDORSED
FILED

San Francisco County Superior Court

APR 03 2007

GORDON PARK-LI, Clerk
BY WESLEY HARRIS
Deputy Clerk

1 Patrick R. Kitchin, Esq. (SBN. 162965)
 2 THE LAW OFFICE OF PATRICK R. KITCHIN
 3 565 Commercial Street, 4th Floor
 4 San Francisco, CA 94111
 5 415-677-9058
 6 415-627-9076 (fax)

7 Daniel Feder, Esq. (SBN. 130867)
 8 THE LAW OFFICES OF DANIEL FEDER
 9 807 Montgomery Street
 10 San Francisco, CA 94133
 11 (415) 391-9476

12 Attorneys for Ann Otsuka, Janis Keefe,
 13 Corinne Phipps and Justin Kiser

14 WILLIAM J. GOINES (SBN 061290)
 15 JEREMY A. MEIER (SBN 139849)
 16 ALISHA M. LOUIE (SBN 240863)
 17 GREENBERG TRAURIG, LLP
 18 1900 University Avenue, Fifth Floor
 19 East Palo Alto, California 94303
 20 Telephone: (650) 328-8500
 21 Facsimile: (650) 328-8508

22 Attorneys for Defendants Polo Ralph Lauren
 23 Corporation; Polo Retail, LLC; Polo Ralph Lauren
 24 Corporation, doing business in California as Polo
 25 Retail Corporation; and Fashions Outlet of America, Inc.

26 (See Last Page for Additional Names of Counsel for the Parties).

27 SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

28 ANN OTSUKA, an individual; JANIS KEEFE,) Case No.: CGC-06-452655
 29 an individual; CORINNE PHIPPS, an)
 30 individual; and JUSTIN KISER, an individual;) JOINT CASE MANAGEMENT
 31 individually and on behalf of all others similarly) CONFERENCE STATEMENT
 32 situated,)
 33 Plaintiffs,)
 34 vs.) Date: April 5, 2007
 35 POLO RALPH LAUREN CORPORATION; a) Time: 1:30 p.m.
 36 Delaware Corporation; et al. and DOES 1-500,) Department: 304
 37 inclusive,) Hon Richard A. Kramer
 38 Defendants.) Complaint Filed: May 30, 2006
 39) Trial Date: None Set

BY FAX

1 Plaintiffs Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser ("Plaintiffs"), and
 2 Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph Lauren Corporation,
 3 doing business as Polo Retail Corporation, and Fashions Outlet of America, Inc. ("Defendants"),
 4 hereby submit this Joint Case Management Conference Statement in advance of the April 5, 2007,
 5 Case Management Conference.

6 A. Nature of Case

7 Plaintiffs filed this class action lawsuit on May 30, 2006. On July 20, 2006, Plaintiffs filed
 8 their First Amended Complaint to add claims under the California Private Attorneys General
 9 Action, Labor Code §§ 2699, et seq., seeking recovery on civil penalties on behalf of themselves,
 10 the putative class and the State of California. Plaintiffs' First Amended Complaint alleges various
 11 labor law violations, including fraud, false imprisonment, failure to pay wages earned, failure to
 12 pay wages timely, failing to pay premium overtime, breach of contract, failure to provide workers
 13 with rest breaks, unjust enrichment, violations of Business and Professions Code §§ 17200, et seq.,
 14 and violations of the Private Attorneys General Act.

15 On October 12, 2006, Defendants demurred to Plaintiffs' First Amended Complaint on
 16 several grounds. The hearing on that motion was held January 22, 2007, and the demurrer was
 17 sustained in part and overruled in part. Since that time, the parties have engaged in discussions
 18 regarding discovery, Polo has filed its Answer and a Cross-Complaint on Kiser for breach of
 19 fiduciary duty and civil conspiracy to commit fraud, and the parties' counsel have met and
 20 conferred in some detail as to ongoing discovery issues.

21 B. Status Of Discovery

22 1. Plaintiffs

23 Plaintiffs served extensive written discovery on all Defendants, focused on issues relevant
 24 to class certification. This discovery seeks (1) information regarding the numbers of employees
 25 working at each Polo store in California during the statute of limitations, store by store; (2)
 26 descriptions of and documents pertaining to relevant employment practices and policies during the
 27 statute of limitations period, store by store; and (3) the persons most knowledgeable about relevant
 28 employment policies and practice during the statute of limitations period, store by store. While the

1 number of individual questions and requests in this discovery is extensive, the discovery is sharply
 2 focused and designed to elicit information relating only to issues of typicality, commonality and
 3 numerosity. It is designed to permit Plaintiffs to evaluate class certification issues. Defendants'
 4 counsel has indicated his client is working now on discovery responses. Defendants have had
 5 several months to collect responsive information. Plaintiffs request the Court set a responsive date
 6 for 32 days from the date of the Case Management Conference: May 7, 2007.

7 Plaintiffs also served 10 notices of depositions of Defendants' managers and persons most
 8 knowledgeable. The parties are working on scheduling these depositions at this time, evaluating
 9 dates in June 2007.

10 All Plaintiffs have responded to Defendants' first set of requests for production. Plaintiffs
 11 Corinne Phipps and Just Kiser have responded to Defendants' first set of special interrogatories.
 12 Defendants have served notices of deposition of all Plaintiffs, but have not scheduled dates, times
 13 and places yet. The parties are working on scheduling dates for these depositions in May 2007.

14 In their portion of this Statement, Defendants mischaracterize the status of discovery.
 15 Plaintiffs have provided proper, verified, responses to Defendants' discovery (see, above),
 16 specifically informing them that damages cannot be addressed, even on behalf of the individual
 17 Plaintiffs, until Polo has provided all wage and timekeeping records. Defendants delayed
 18 providing Plaintiffs with their wage records until March 29, 2007. The records Defendants have
 19 provided are unverified and, according to Defendants' counsel, are incomplete. Once these
 20 records are complete and Plaintiffs have been served with discovery addressing their analysis of
 21 these records, Plaintiffs will provide responses relating to their individual damages.

22 In addition to mischaracterizing the status of discovery, Defendants mischaracterize
 23 Plaintiffs' discovery obligations. Defendants suggest Plaintiffs have an ongoing duty to
 24 supplement discovery responses that were based on all information available to them at the time
 25 discovery responses were provided. Under California law, so-called "continuing interrogatories"
 26 are expressly prohibited. (See, Code of Civil Procedure § 2030.060(g).) Thus, Defendants'
 27 request for an order compelling Plaintiffs to supplement their discovery responses must be denied
 28 as procedurally defective.

1 Plaintiffs intend to commence discovery relating to their California Private Attorneys
 2 General Act ("PAGA"). Plaintiffs are entitled to broad discovery on these claims and are not
 3 required to obtain class certification prior to conducting that discovery.

4 Absent unanticipated delays caused by Defendants, Plaintiffs will be in a position to file
 5 their motion for class certification in or about August 2007.

6 **2. Defendants**

7 At the initial complex litigation Case Management Conference ("CMC") held on January
 8 22, 2007, Polo indicated that it required certain damage information from Plaintiffs in order to
 9 adequately assess its potential rights to removal and the Court, acknowledging the significance of
 10 the jurisdictional issues involved, urged the Plaintiffs and counsel to make an effort to discuss and
 11 try to determine amounts in controversy. Counsel have since met and conferred regarding this and
 12 other discovery matters and Polo has again sought, in particular, disclosure from Plaintiffs of
 13 fundamental damage claim information and documents necessary to allow it to assess jurisdiction
 14 and removal. To date, however, Polo has not received meaningful Plaintiffs' damage calculations,
 15 claims or data, nor any other adequate discovery responses and/or documents sufficient to allow
 16 Polo to adequately evaluate the potential for any removal to federal court.

17 Defendants served extensive Requests for Production of Documents on October 27, 2006,
 18 Special Interrogatories on November 20, 2006, and Deposition Notices on October 27, 2006 to
 19 each of the named Plaintiffs. Plaintiffs served responses to Defendants' Request for Production of
 20 Documents on December 12, 2006 and produced certain electronic documents on January 11,
 21 2006. Plaintiffs served responses to Defendants' Request for Special Interrogatories as to
 22 Plaintiffs Kiser and Phipps on January 15, 2006. Plaintiffs' responses to Defendants' Special
 23 Interrogatories for Plaintiffs Otsuka and Keefe remain outstanding and Polo requires these and
 24 other responses to assess damages, factual claims, and liability issues.

25 Polo's interrogatories to Plaintiffs sought in great detail and with much specificity a variety
 26 of underlying damage amounts. Plaintiffs' limited interrogatory responses, however, have so far
 27 been largely evasive or non-responsive as to the amounts and nature of Plaintiffs' underlying
 28 damages (and more).

1 Polo produced on March 28, 2007 company documents in response to Plaintiffs' requests
 2 (but no formal written responses in light of the Court's prior directives concerning the flow of
 3 discovery). Documents produced from Defendants include personnel files of Plaintiffs,
 4 spreadsheets relating to the named Plaintiffs' commissions and wages, and other responsive
 5 documents (all Bates stamped and designated as "confidential"). Polo anticipates serving
 6 responses to Plaintiffs' interrogatories in the next thirty days.

7 Further, on March 28, 2007 the parties submitted to the Court for its approval and entry a
 8 proposed Stipulated Protective Order.

9 In light of the current exchange of interrogatory responses, supplemental documents and
 10 other related ongoing informal and formal discovery, Polo's prior noticed depositions for each of
 11 the named Plaintiffs have been continued to dates in April, 2007. In addition, on February 2, 2007
 12 Plaintiffs served notices for April 2007 depositions of ten different Polo representatives and
 13 employees, including that for the "Person Most Qualified" ("PMQ"). These additional depositions
 14 are presently being re-scheduled due to witnesses' availability and location (the PMQ may reside
 15 in New York), as well as due to the outstanding schedule for prior depositions and other written
 16 discovery. Defendants intend on completing the prior noticed depositions of Plaintiffs prior to
 17 subsequently noticed depositions taking place, and are working with Plaintiffs' counsel to set an
 18 agreeable timetable for the fourteen currently noticed depositions. Defendants anticipate taking
 19 depositions in the next 60 days.

20 Extensive further written, documentary and oral discovery is anticipated over the coming
 21 months. Given the complexity and volume of anticipated discovery, Defendants expect that
 22 discovery will be completed in or about December 2007.

23 C. Anticipated Motions

24 1. Plaintiffs

25 **Severance of Cross Complaint (Code of Civil Procedure § 1048(b)):** On February 28,
 26 2007, Defendants filed a cross complaint against Plaintiff Justin Kiser. Defendants' allege Justin
 27 Kiser committed employee discount fraud by using his status as an employee to obtain a discount
 28

1 on the purchase of Polo products for a non-employee, and are apparently seeking around fifty
 2 dollars, plus punitive damages. Defendants' cross complaint is designed to increase the
 3 complexity of this litigation and should not be permitted to side-track this class action lawsuit.
 4
 5 While the cross complaint is not technically a SLAPP lawsuit, it was filed more than one year after
 6 the alleged discount fraud and only after Kiser had filed this employment class action against
 7 Defendants, and it is designed to have similar effect to a SLAPP lawsuit. The cross complaint is,
 8 at best, a small claims matter, that should not be litigated with this complex, class action.
 9

10 Plaintiffs request that the Court use its discretionary authority under Code of Civil Procedure §
 11 1048(b) to order the cross complaint 'severed' so it may be heard in the small claims division
 12 where it belongs.

13 If the Court wishes briefing on issues relating to the severance of Defendants' cross
 14 complaint against Justin Kiser, Plaintiffs request setting a date as soon as the Court's calendar will
 15 permit.

16 Finally, Plaintiff Justin Kiser intends to file a demurrer to this cross complaint.

17 **Discovery Motions:** Plaintiffs anticipate the need for the Court's involvement in issues
 18 relating to the class-wide discovery rights of the parties. While Plaintiffs have limited their first
 19 set of discovery requests to matters relating to "numerosity, typicality and commonality," Plaintiffs
 20 understand Defendants may have a different perspective on the appropriateness of some of their
 21 discovery. In addition, Plaintiffs believe they are entitled to merits discovery at this time on their
 22 Private Attorneys General Act claims. If Defendants have a different perspective, the Court's
 23 assistance will be required.

24 **Motion for Class Certification:** Plaintiffs intend to seek class certification as quickly as
 25 possible following the completion of the discovery discussed above. With the cooperation of
 26 Defendants on scheduling issues, and minimum discovery disputes, Plaintiffs believe their motion
 27 for class certification can be filed no later than September 2007.

1 **Motion for Summary Adjudication:** As discovery proceeds Plaintiffs will evaluate the
 2 appropriateness of resolving limited legal issues through summary adjudication.

3 2. Defendants

4 This Court sustained in part and overruled in part Polo's demurrer to Plaintiffs' First
 5 Amended Complaint at the hearing on January 22, 2007, entered its order on February 5, 2007, and
 6 notice of entry of order was served on Polo on February 13, 2007. Polo timely filed and served its
 7 Answer to the First Amended Complaint on February 28, 2007 and, at the same time, Fashions
 8 Outlet of America, Inc. filed and served its Cross-Complaint against Plaintiff Kiser. The Cross-
 9 Complaint seeks relief for breach of fiduciary duty and for civil conspiracy to commit fraud.
 10 Plaintiff's responsive filing to the Cross-Complaint was due on April 4, 2007, and an extension has
 11 been granted through and until April 24, 2007.

12 Polo has only as of April 2, 2007 (pursuant to this filing) been apprised that Plaintiffs
 13 would request severance pursuant to Code of Civil Procedure Section 1048(b) -- and Polo objects to
 14 any such transfer or severance and to the procedure used by Plaintiffs to make this request. Polo
 15 has granted an extension of time for Plaintiffs to respond, and Polo requires an opportunity to
 16 respond to this severance request. Absent a regularly noticed hearing and briefing schedule, Polo
 17 would be unduly prejudiced were the Court to entertain such a severance request (motion) in the
 18 guise of this Case Management Conference.

19 **Discovery Motions:**

20 As indicated above, Polo raised the issue of removal during the January 22, 2007 CMC and
 21 the Court, acknowledging the jurisdictional information required to allow Polo to make its removal
 22 analysis, then urged Plaintiffs to provide meaningful discovery as to their damage claims. Polo
 23 has sought specific damage information through formal discovery in its prior document and
 24 interrogatory requests to each of the Plaintiffs, as well as pursuant to informal meet and confer
 25 discussions since the last CMC. All responses received to date from Plaintiffs have been
 26 inadequate and incomplete as to damage claims, and Polo is thus unable to fully assess its removal
 27 rights.

1 Defendants still require sufficiently well-tailored and precise damage responses from
2 Plaintiffs. Defendants continue to meet and confer with Plaintiffs' counsel on a regular basis in an
3 effort to resolve these and other discovery matters, but now request the Court further urge or order
4 Plaintiffs to provide supplemental documentation and interrogatory responses and/or any other
5 relevant information and data necessary to a meaningful initial analysis of alleged damages.
6 Absent further immediate production or responses related to damages, Polo reserves the right to
7 file a formal motion to compel documents and/or supplemental interrogatory responses.

8 **Motion for Summary Judgment/Adjudication:** After significant discovery has been
9 concluded, Defendants may file a Motion for Summary Judgment as to all of Plaintiffs' claims, or,
10 in the alternative, a Motion for Summary Adjudication as to some of Plaintiffs' claims.

11 D. Alternative Dispute Resolution

12 1. Plaintiffs

13 Plaintiffs are amenable to private mediation following the completion of sufficient
14 discovery to evaluate liability and damages.

15 2. Defendants

16 Defendants remain amenable to private mediation or other appropriate non binding neutral
17 evaluation following the completion of sufficient discovery to evaluate Plaintiffs' claims.

18 E. Trial

19 1. Plaintiffs

20 While Plaintiffs are not yet in a position to accurately estimate when this matter will be
21 ready for trial, they intend to move this matter forward as expeditiously as possible. Plaintiffs
22 request that the Court set a trial date at a subsequent Case Management Conference following the
23 completion of the discovery described above.

24 ///

25 ///

26 ///

27 ///

28 ///

1 2. Defendants

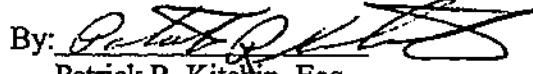
2 Defendants request the Court hold a trial setting conference to determine an appropriate
3 trial date once discovery timelines and closure dates have been established.

4

5 DATED: April 2, 2007

THE LAW OFFICE OF PATRICK R. KITCHIN

6

7 By: 
Patrick R. Kitchin, Esq.
8 Attorneys for Plaintiffs

9

10 DATED: April 2, 2007

GREENBERG TRAURIG

11

12 By _____
13 William J. Goines
14 Jeremy A. Meier
15 Alisha M. Louie

16 Attorneys for Defendants Polo Ralph Lauren
17 Corporation; Polo Retail, LLC; Fashions Outlet of
18 America, Inc.; and Polo Retail Corporation

1 2. Defendants

2 Defendants request the Court hold a trial setting conference to determine an appropriate
3 trial date once discovery timelines and closure dates have been established.

4

5 DATED: April 2, 2007

THE LAW OFFICE OF PATRICK R. KITCHIN

6

7 By: _____
8 Patrick R. Kitchin, Esq.
9 Attorneys for Plaintiffs

10 DATED: April 2, 2007

GREENBERG TRAURIG

11

12 By 
13 William J. Goines
14 Jeremy A. Meier
15 Alisha M. Louie

16 Attorneys for Defendants Polo Ralph Lauren
17 Corporation; Polo Retail, LLC; Fashions Outlet of
18 America, Inc.; and Polo Retail Corporation

1 **Additional Counsel for Parties**

2 Daniel Feder, Esq. (SBN. 130867)
3 THE LAW OFFICES OF DANIEL FEDER
4 807 Montgomery Street
5 San Francisco, CA 94133
6 (415) 391-9476

7
8 Attorneys for Ann Otsuka, Janis Keefe,
9 Corinne Phipps and Justin Kiser

10 BRIAN S. COUSIN (*PRO HAC VICE*)
11 NEIL A. CAPOBIANCO (*PRO HAC VICE*)
12 GREENBERG TRAURIG, LLP
13 MetLife Building
14 200 Park Avenue
15 New York, NY 10166
16 Telephone: (212) 801-9200
17 Facsimile: (212) 801-6400

18
19 Attorneys for Defendants Polo Ralph Lauren
20 Corporation; Polo Retail, LLC; Polo Ralph Lauren
21 Corporation, doing business in California as Polo
22 Retail Corporation; and Fashions Outlet of America, Inc.